

January 23, 2007

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **L05P0017**
Proposed Ordinance No. **2006-0523**

OTANI GARDENS

Preliminary Plat Application and Transfer of Density Credits

Location: 8255 South 118th Street, Seattle

Applicant: Schneider Homes
represented by **Hans Korve**
DMP Engineering, Inc.
726 Auburn Way North
Auburn, Washington 98002
Telephone: (253) 333-2200
Facsimile: (253) 333-2206

King County: Department of Development and Environmental Services (DDES)
represented by **Fereshteh Dehkordi**
900 Oakesdale Avenue Southwest
Renton, Washington 98055
Telephone: (206) 296-7173
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SUMMARY OF RECOMMENDATIONS/DECISION:

Department's Preliminary Recommendation:	Approve subject to conditions
Department's Final Recommendation:	Approve subject to revised conditions
Examiner's Decision:	Approve subject to revised conditions

EXAMINER PROCEEDINGS:

Hearing opened:	January 9, 2007
Hearing closed:	January 9, 2007
Hearing reopened for administrative purposes:	January 11, 2007
Hearing closed:	January 11, 2007

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES AND TOPICS ADDRESSED:

- Transfer of density credits
- Recreation area
- Road access

SUMMARY:

The proposed subdivision of 34 lots on a 4.21 acre parcel in the urban area is approved, using transfer of density credits for nine lots in excess of the base density of the R-6 zone classification.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer:	Schneider Homes, Inc. 6510 Southcenter Blvd. Tukwila, WA 98188 (206) 248-2471
Engineer:	Daley-Morrow-Poblete, Inc. 726 Auburn Way North Auburn, WA 98002
STR:	NE ¼ 12-23-04
Location:	At the southwest corner of South 118 th Street and 84 th Avenue South
Zoning:	R-6-P
Acreage:	4.2 acres
Number of Lots:	34
Proposed Density:	8 du/acre
Lot Size:	2,843 – 4,111 (3,200 typical) sq. ft.
Proposed Use:	Residential
Sewage Disposal:	Skyway Water and Sewer District
Water Supply:	Skyway Water and Sewer District
Fire District:	Fire District 40
School District:	Renton School District

Complete Application Date: September 6, 2005

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's preliminary report to the King County Hearing Examiner for the January 9, 2007, public hearing are found to be correct and are incorporated herein by this reference. The LUSD staff recommends approval of the application, subject to conditions.
3. The total area of the subject property is 4.21 acres. The base density permitted by the R-6 zone classification is 25 lots. The Applicant proposes to use a transfer of nine density credits to develop a total of 34 single-family dwelling units on the site. This would result in a site density of 8.08 dwelling units per acre. The maximum density permitted by the R-6 zone classification is nine dwelling units per acre. This maximum density may be achieved only through the application of residential density incentives or transfers of development rights. KCC 21A.12.030.A and B.

The owners and residents of many of the surrounding and nearby properties oppose development in excess of the base density of 6 dwelling units per acre. It is argued by the neighbors that the average neighborhood lot size is 7,976 square feet, which is substantially larger than the typical lot size of approximately 3,200 square feet for the proposed plat of Otani Gardens. The smaller lots on this property will change the appearance of the neighborhood. It is argued that this change will be detrimental and is contrary to several policies of the 2004 King County Comprehensive Plan. It is also argued that the proposed density is contrary to policies of the City of Renton. (The property is within a proposed annexation area for the City of Renton.)

The adoption of the King County Zoning Code is accomplished by legislative action of the King County Council, and is based upon the policies of the King County Comprehensive Plan. Adoption of the Comprehensive Plan and the zoning code are reviewed by the State to assure consistency with the Growth Management Act and other provisions of state law. Disputes concerning the consistency of the Comprehensive Plan and zoning code with the Growth Management Act are subject to review by the Growth Management Hearings Board. The legislative adoption of the Comprehensive Plan and zoning code are intended to accomplish state and county-wide needs and policies, a principal one of which is the concentration of new development in the urban areas.

The appearance of the subject property will change substantially with this proposed development, and that change will affect the appearance of the neighborhood. However, facilities and services to provide adequately for this development exist within the area, and additional improvements will be provided by the Applicant in order to meet the conditions of final plat approval.

4. The Director of the Department of Development and Environmental Services has determined that the two separate recreation tracts proposed by the Applicant meet the requirements of the King County Code for recreation area, and that the separated recreation tracts should be approved for this plat. Her memorandum to that effect was transmitted to the Hearing Examiner on January 11, 2007, and has been entered into the record as exhibit no. 18.
5. Road access to the subject property has been considered by the Land Use Services Division and the King County Department of Transportation. 84th Avenue South is an urban collector arterial adjacent to the east boundary of the subject property. South 118th Street is an unclassified street

that currently functions as an urban subcollector. It is located adjacent to the north boundary of the subject property.

Numerous streets already enter 84th Avenue South from the east and from the west in the immediate vicinity. No additional intersection to serve the subject property could be constructed consistent with the King County Road Standards' provisions for the minimum spacing of roads intersecting with arterials. The Land Use Services Division and Department of Transportation have determined that the safest access to and from the subject property would be from South 118th, where an entrance road can be constructed west of the entrance to the existing elementary school north of the subject property.

Road improvements required to be constructed by the Applicant as conditions of final plat approval will result in additional pavement and sidewalks along the property frontage on both 84th Avenue South and South 118th Street. The internal access road will be required to meet County road standards for an urban subaccess street and for a street that is intersected by an alley. The alley proposed to provide vehicular access to lots 20-32 will substantially reduce the number of driveways entering onto South 118th Street. Lots 25-34 will front on South 118th Street, but only lots 33 and 34 will be permitted to have vehicular access onto that street. Lot 1 will have a side lot line (which may be fenced) along South 118th Street. This design should provide a reasonably attractive streetscape facing the existing elementary school on South 118th Street.

6. Fencing along the west property line and south property line may be built by individual homeowners, if it is not constructed by the developer of the plat or home builders. Although requested by one of the adjacent property owners to the south, fencing between similar uses is not required by the King County Code and, in the absence of significant environmental impact, is not required by King County.

CONCLUSIONS:

1. If approved subject to the conditions recommended below, the proposed subdivision will comply with the goals and objectives of the King County Comprehensive Plan, subdivision and zoning codes, and other official land use controls and policies of King County.
2. If approved subject to the conditions recommended below, this proposed subdivision will make appropriate provision for the public health, safety and general welfare, and for open spaces, drainage ways, streets, other public ways, transit stops, potable water supply, sanitary waste, parks and recreation, playgrounds, schools and school grounds and safe walking conditions for students who only walk to school; and it will serve the public use and interest.
3. The conditions for final plat approval recommended below are in the public interest and are reasonable and proportionate requirements necessary to mitigate the impacts of the development upon the environment.
4. The dedications of land or easements within and adjacent to the proposed plat, as required for final plat approval or as shown on the proposed preliminary plat submitted by the Applicant on

September 13, 2006, are reasonable and necessary as a direct result of the development of this proposed plat, and are proportionate to the impacts of the development.

5. The subject site meets the requirements for receiving sites for the transfer of density rights program, as established by KCC 21A.37.030. The development shall be subject to all zoning code provisions for the R-6 zone classification, except that it shall comply with the dimensional standards of the R-8 zone classification.
6. The Director of the Department of Development and Environmental Services has exercised her discretion pursuant to KCC 21A.14.180, to determine that the residents of this proposed subdivision would be better served by multiple recreation areas developed with recreation or play facilities.
7. The proposed access to the plat by way of South 118th Street to 82nd Place South is a safe and reasonable access, and can be developed consistent with King County road standards.
8. A traffic control plan is required in conjunction with the engineering plan review, to control construction traffic to and from the site. The construction traffic control plan must consider the phasing of development and assure that access to adjacent and nearby properties is not interrupted or rendered unsafe. Due to the adjacent school with access on South 118th Street, the days and hours of school operation should be considered when the traffic control plan is reviewed and approved, and conflicts with school pedestrian and vehicle traffic avoided to the maximum extent feasible.

DECISION:

The proposed preliminary plat of Otani Gardens, as revised and received on September 13, 2006, and the transfer of nine (9) development rights to the subject property, are approved, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in King County Council Motion No. 5952.
3. The proposed plat shall comply with all zoning code provisions of the R-6 zone classification, except that all lots shall meet the minimum dimensional requirements of the R-8 zone classification and shall be generally as shown on the face of the approved preliminary plat. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant is using the provisions of KCC 21A.12.030 and KCC 21A.37.030 to transfer nine (9) development credits to this property to enable the platting of additional lots. A valid TDR certificate for the 9 credits in the name of the applicant shall be submitted with the final plat documents for review and approval.

5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 11187, as amended (1993 KCRS).
6. The applicant must obtain the approval of the King County Fire Protection Engineer for the adequacy of the fire hydrant, water main, and fire flow standards of Chapter 17.08 of the King County Code.
7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the code requirements.
 - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
8. The following conditions specifically address drainage issues for this particular plat:
 - a. The drainage detention facilities shall be designed at a minimum to meet the Conservation Flow Control and Basic Water Quality menu in the 2005 King County Surface Water Design Manual (KCSWDM).
 - b. A drainage interceptor ditch, or other interceptor design, is required along the south boundary of the site. Details of this design shall be shown on the engineering plans.
 - c. To implement the required Best Management Practices (BMP's) for treatment of storm water, the final engineering plans and technical information report (TIR) shall clearly demonstrate compliance with all applicable design standards. The requirements for best management practices are outlined in Chapter 5 of the 2005 KCSWDM. The design engineer shall address the applicable requirements on the final engineering plans and provide all necessary documents for implementation. The final recorded plat shall include all required covenants, easements, notes, and other details to implement the required BMP's for site development.

9. The following road improvements are required for this subdivision, and shall be constructed according to the 1993 King County Road Standards:
- a. FRONTAGE: The frontage along South 118th Street shall be improved at a minimum to the urban subcollector street standard.(south side). The design shall require compliance with Section 4.01(f) of the KCRS; asphalt overlay when widening. The subgrade of the existing South 118th Street shall be evaluated and repaired where needed, prior to placement of the overlay.

Adequate right-of-way for the South 118th Street frontage improvement shall be provided upon recording of the final plat. A right-of-way radius shall be provided across Tract C at the South 118th Sreet/84th Avenue South intersection.
 - b. FRONTAGE: The frontage along 84th Avenue South shall be improved at a minimum to the urban collector arterial standard.(west side). The design shall require compliance with Section 4.01(f) of the KCRS; asphalt overlay when widening. The subgrade of the existing 84th Avenue South Street shall be evaluated and repaired where needed, prior to placement of the overlay.
 - c. The internal access road (82nd Pl So/ S 119th Ct.) shall be improved at a minimum to the urban subaccess street standard. 82nd Place South shall be designed and the pavement width shall be minimum 28 ft wide, per Section 2.09 of the KCRS (alley connection).

The internal access road (82nd Pl So/119th Ct.) shall also meet the minimum centerline radius requirements in Section 2.10 of the KCRS.
 - d. The proposed alley serving Lots 20 thru 32 shall be designed per Section 2.09 of the KCRS. A line of sight easement is required across the Recreation Space Tract for the required alley sight distance. This easement shall be shown on the engineering plans and the final plat.
 - e. The private access tract (Tract “C”) shall be improved per Section 2.09 of the KCRS. This tract shall be owned and maintained by the property served, or may be owned by the homeowners’ association (access to lot 19 shall be from South 119th Court). Notes to this effect shall be shown on the engineering plans and on the final plat map.
 - f. Modifications to the above road conditions may be considered according to the variance procedures in Section 1.08 of the KCRS.
10. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.
11. The applicant or subsequent owner shall comply with King County Code 14.75, Mitigation Payment System (MPS), by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. The applicant has the option to either: (1) pay the MPS fee at final plat recording, or (2) pay the MPS fee at the time of building permit issuance. If the first option is chosen, the fee paid shall be the fee in effect at the time of plat application and a note shall be

placed on the face of the plat that reads, "All fees required by King County Code 14.75, Mitigation Payment System (MPS), have been paid." If the second option is chosen, the fee paid shall be the amount in effect as of the date of building permit application.

12. (Deleted)

13. There shall be no direct vehicular access to or from South 118th Street by Lot 1 and Lots 25 through 32. A note to this effect shall appear on the engineering plans and final plat.

14. Two recreation tracts have been proposed and are approved. A recreation space plan for both tracts shall be provided consistent with the requirements of KCC 21A.14.180 and KCC 21A.14.190 (i.e., sport court[s], children's play equipment, picnic table[s], benches, etc.). The plan shall show landscaping consistent with KCC 21A.16 and the finished grade. The approved engineering plans shall be consistent with the overall conceptual plan. The recreation plan design and landscaping shall be consistent with Condition 9. D.

A performance bond for recreation space improvements shall be posted prior to recording of the plat.

15. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the recreation tracts and alley. (See condition no. 18.)

16. Street trees shall be provided as follows:

- a. Trees shall be planted at a rate of one tree for every 40 feet of frontage along frontage and interior streets. Spacing may be modified to accommodate sight distance requirements for driveways and intersections.
- b. Trees shall be located within the street right-of-way and planted in accordance with Drawing No. 5-009 of the 1993 King County Road Standards, unless King County Department of Transportation determines that trees should not be located in the street right-of-way.
- c. If King County determines that the required street trees should not be located within the right-of-way, they shall be located no more than 20 feet from the street right-of-way line.
- d. The trees shall be owned and maintained by the abutting lot owners *or* the homeowners association or other workable organization unless the County has adopted a maintenance program. This shall be noted on the face of the final recorded plat.
- e. The species of trees shall be approved by DDES if located within the right-of-way, and shall not include poplar, cottonwood, soft maples, gum, any fruit-bearing trees, or any other tree or shrub whose roots are likely to obstruct sanitary or storm sewers, or that is not compatible with overhead utility lines.

- f. The applicant shall submit a street tree plan and bond quantity sheet for review and approval by DDES prior to engineering plan approval.
- g. The applicant shall contact Metro Service Planning at 684-1622 to determine if 84th Avenue South is on a bus route. If it is a bus route, the street tree plan shall also be reviewed by Metro.
- h. The street trees must be installed and inspected, or a performance bond posted prior to recording of the plat. If a performance bond is posted, the street trees must be installed and inspected within one year of recording of the plat. At the time of inspection, if the trees are found to be installed per the approved plan, a maintenance bond must be submitted or the performance bond replaced with a maintenance bond, and held for one year. After one year, the maintenance bond may be released after DDES has completed a second inspection and determined that the trees have been kept healthy and thriving.

A landscape inspection fee shall also be submitted prior to plat recording. The inspection fee is subject to change based on the current County fees.

- 17. (See condition no. 4.)
- 18. The alley shall be owned and maintained by the Homeowners' Association, unless an alternative arrangement is approved by DDES. Covenants may provide for assessments on and other conditions affecting the lots served by the alley.

ORDERED this 23rd day of January, 2007.

James N. O'Connor
King County Hearing Examiner *pro tem*

TRANSMITTED this 23rd day of January, 2007, to the parties and interested persons of record:

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NOTICE OF RIGHT TO APPEAL

In order to appeal the decision of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) ***on or before February 6, 2007***. If a notice of appeal is filed, the original and six (6) copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council ***on or before February 13, 2007***. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the decision of the hearing examiner contained herein shall be the final decision of King County without the need for further action by the Council.

MINUTES OF THE JANUARY 9, 2007, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. L05P0017.

James N. O'Connor was the Hearing Examiner in this matter. Participating in the hearing were Fereshteh Dehkordi, Bruce Whittaker and Kristen Langley representing the Department; Hans Korve and Ken Peckham representing the Applicant, and Hope Gibson, James Shamek, Mark Jablonski, Marv Green, Mike Glain, Bob Hendrickson, Jon Bonime, Delores White and Ralph Frasier.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	Department of Development and Environmental Services file no. L05P0017
Exhibit No. 2	Department of Development and Environmental Services Preliminary Report, dated January 9, 2007

- Exhibit No. 3 Application for Land Use Permits received August 11, 2005
- Exhibit No. 4 SEPA Environmental checklist received August 11, 2005
- Exhibit No. 5 SEPA Determination of Nonsignificance issued October 20, 2006
- Exhibit No. 6 Affidavit of Posting indicating a posting date of May 12, 2006, received by DDES on May 18, 2006
- Exhibit No. 7 Revised Site Plan received September 13, 2006, three pages
- Exhibit No. 8 Conceptual Drainage Plan by DMP Engineering, Inc., received September 13, 2006
- Exhibit No. 9 Assessor's Maps NE 12-23-04, SE 12-23-04 and NW 07-23-05.
- Exhibit No. 10 Level One Off-site Drainage Analysis report by DMP Engineering, Inc., revised February 16, 2006.
- Exhibit No. 11 Certificate of Transportation Concurrency (#02084) dated November 22, 2006.
- Exhibit No. 12 Letter from the Greg Zimmerman, City of Renton, dated October 27, 2006.
- Exhibit No. 13 Letter from Hope Gibson dated December 2, 2005
- Exhibit No. 14 Letter from neighbors received March 31, 2006.
- Exhibit No. 15 Condition 17 - New condition regarding density credit.
- Exhibit No. 16 Printout of comments provided by Hope Gibson at the 1/09/07 hearing
- Exhibit No. 17 Assessor's map annotated to show school walking route

The following exhibit was entered into the record on January 11, 2007:

- Exhibit No. 18 Memo from Stephanie Warden, Director, DDES, dated January 11, 2007

JNOC:ms

L05P0017 RPT